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# Law student psychological distress, ADR and sweet-minded, sweet-eyed hope

Rachael Field and James Duffy\*

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*Empirical studies conducted by both Australian and American researchers have established law school's causative role in increasing law student psychological distress. The purpose of this article is to highlight the role that law school curriculum might play in addressing this problem. By utilising lessons from the field of positive psychology (and in particular hope theory) a first year law subject at the Queensland University of Technology has been specifically designed to promote law student well-being. Traditional legal education and pedagogy do not hold the answers for addressing this social phenomenon. A first year curriculum that introduces students to alternative dispute resolution, non-adversarial justice, resilience and the positive role of lawyers in society may go some way to addressing the law student well-being challenge.*

## INTRODUCTION

In February 2012, RMIT University Melbourne hosted a forum on alternative dispute resolution (ADR) in legal education and the promotion of student well-being. The forum was attended by academics in law and psychology, practising barristers and ADR practitioners, board members from the National Alternative Dispute Resolution Advisory Committee (NADRAC), and Marie Jepson representing the Tristan Jepson Memorial Foundation. Across the two days of the forum, a collective concern was expressed about the psychological well-being of university students throughout the Australian tertiary sector.<sup>1</sup> What also became apparent is that synergies exist between the teaching of ADR and the improvement of psychological well-being amongst law students. We know as a

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<sup>1</sup> See, for example, Leahy C et al, "Distress Levels and Self-reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Students: Cross-Sectional Study" (2010) 44(7) *Australian and New Zealand Journal of Psychiatry* 608; Beaton Research & Consulting, *2011 Annual Business and Professions Study* (2011), [http://www.beatonglobal.com/pdfs/2011\\_Annual\\_Business\\_and\\_Professions\\_Study.pdf](http://www.beatonglobal.com/pdfs/2011_Annual_Business_and_Professions_Study.pdf) viewed 22 June 2012.

result of research in both Australia<sup>2</sup> and the United States<sup>3</sup> that law students suffer elevated levels of psychological distress when compared to students in other faculties and members of the general population (of a similar age). This was empirically confirmed by a study published by the Australian Brain and Mind Research Institute in 2009.<sup>4</sup> Whilst we are as yet unable to adequately explain these high levels of psychological distress, we now know that the psychological well-being of law students declines in their first year of legal education.<sup>5</sup> We also know that the legal academy has not adequately harnessed opportunities within the law curriculum to promote law student well-being.<sup>6</sup>

In 2010, Field was awarded an Australian Learning and Teaching Council Teaching Fellowship to consider curriculum renewal and design strategies to address the high levels of psychological distress being experienced by law students.<sup>7</sup> The central premise of the

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<sup>2</sup> Allen J and Baron P, "Buttercup Goes to Law School: Student Well-being in Stressed Law Schools" (2004) 29(6) *Alternative Law Journal* 285; James C, "Seeing Things as We Are: Emotional Intelligence and Clinical Legal Education" (2005) 8 *Clinical Legal Education* 123; Seligman M, Verkuil P and Kang T, "Why Lawyers are Unhappy" (2005) 10(1) *Deakin Law Review* 49; Tani M and Vines P, "Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?" (2007) 19(1) *Legal Education Review* 3; Hall K, "Do We Really Want to Know? Recognising the Importance of Student Psychological Well-being in Australian Law Schools" (2009) 9 *QUT Journal of Law and Justice* 1; Hall K, Townes O'Brien M and Tang S, "Developing a Professional Identity in Law Schools: A View from Australia" (2010) 4 *Phoenix Law Review* 19; Townes O'Brien M, Tang S and Hall K, "No Time to Lose: Negative Impact on Law Student Well-being May Begin in Year One" (2011) 2(2) *International Journal of the First Year in Higher Education* 49; Townes O'Brien M, Tang S and Hall K, "Changing our Thinking: Empirical Research on Law Student Well-being, Thinking Styles and the Law Curriculum" (2011) 21(2) *Legal Education Review* 149; Antolak-Saper N, England L and Lester A, "Health and Well-being in the First Year: The Law School Experience" (2011) 36(1) *Alternative Law Journal* 47.

<sup>3</sup> See, for example, Krieger L, "Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence" (2002) 52 *Journal of Legal Education* 112 at 115. See also Sheldon KM and Krieger LS, "Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being" (2004) 22 *Behavioral Sciences and Law* 261; Dammeyer MM and Nunez N, "Anxiety and Depression Among Law Students: Current Knowledge and Future Directions" (1999) 23 *Law and Human Behavior* 55; McKinney RA, "Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?" (2002) 8 *Legal Writing: The Journal of the Legal Writing Institute* 229; Daicoff S, "Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism" (1997) 46 *American University Law Review* 1337.

<sup>4</sup> Kelk N et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers*, Brain & Mind Research Institute Monograph (2009), <http://www.cald.asn.au/docs/Law%20Report%20Website%20version%204%20May%202009.pdf> viewed 22 June 2012. See also Kelk N, Medlow S and Hickie I, "Distress and Depression Among Australian Law Students: Incidence, Attitudes and the Role of Universities" (2010) 32 *Sydney Law Review* 113. The funding for this research was provided by the Tristan Jepson Memorial Foundation. See also, for example, Stallman H, "A Qualitative Evaluation of Perceptions of the Role of Competition in the Success and Distress of Law Students" (2012) *Higher Education Research and Development* (forthcoming).

<sup>5</sup> Benjamin A et al, "The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers" (1986) 11(2) *American Bar Foundation Research Journal* 225.

<sup>6</sup> Hess GF, "Heads and Hearts: The Teaching and Learning Environment in Law School" (2002) 52 *Journal of Legal Education* 75.

<sup>7</sup> For information about the Fellowship, see [www.olt.gov.au/altc-teaching-fellow-rachael-field](http://www.olt.gov.au/altc-teaching-fellow-rachael-field) viewed 22 June 2012. A "Wellness Network for Law" has also been established under the auspices of the Fellowship. This Network is hosted on the Tristan Jepson Memorial Foundation website, [www.tjmf.org.au](http://www.tjmf.org.au) viewed 22 June 2012.

Fellowship is that incorporating ADR into the curriculum, both by way of a specialist elective subject and through embedding ADR throughout the Priestly 11 core subjects, is a critical strategy for the promotion of law student well-being. This is a premise supported by the work of Howieson and Ford at the University of Western Australia.<sup>8</sup> The focus on dispute resolution intends to instil in students a sense of hope and optimism about their legal studies and future professional role as lawyers. This intention is grounded in the scholarship of positive psychology, and particularly the theory of hope.<sup>9</sup>

This article describes the first year dispute resolution subject designed as part of the Fellowship and piloted at the Queensland University of Technology (QUT) Law School in semester 2 of 2011. The subject, entitled *LWB150: Lawyering and Dispute Resolution*, is discussed here as one possible strategy for the promotion of student psychological well-being in law schools in Australia. Part I of this article describes the subject, its goals and content. Part II articulates how the subject's focus on ADR, non-adversarial practice and the positive role of lawyers in society, specifically works to promote law student psychological well-being. Student feedback provided through the formal university subject evaluation process (LEX) suggests that the subject has been successful in achieving some of its primary aims.<sup>10</sup> This preliminary evaluation of the subject will potentially form the basis of an ongoing research regime to develop and assess valid and reliable ways of using the law curriculum to promote student well-being.

## **PART I: LWB150**

*LWB 150: Lawyering and Dispute Resolution* aims to promote student psychological well-being by encouraging students to engage with the positive place that non-adversarial practice and dispute resolution have in the practice of law.<sup>11</sup> The focus on ADR and non-adversarial justice is designed to present law students with a conception of lawyering that

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<sup>8</sup> See Howieson J and Ford W, *Teaching and Learning skills: Increasing a Sense of Law School Belongingness*, in Student Engagement: Proceedings of the 16th Annual Teaching Learning Forum (Perth, January 2007), <http://lsn.curtin.edu.au/tlf/tlf2007/refereed/howieson.html> viewed 22 June 2012; and also Howieson J, "ADR Education: Creating Engagement and Increasing Mental Well-being Through an Interactive and Constructive Approach" (2011) 22 ADJR 48. See also Douglas K and Field R, *Teaching Non-adversarial Practice in the First Year of Law: A Proposed Strategy for Addressing High Levels of Psychological Distress in Law Students*, Presented at the 14th Pacific Rim First Year in Higher Education Conference (Fremantle, 28 June-1 July 2011).

<sup>9</sup> Snyder CR (ed), *Handbook of Hope: Theory, Measures, & Applications* (Academic Press, 2000).

<sup>10</sup> The LEX teaching and learning evaluation process at QUT has ethics approval. See Field R and Duffy J, "Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-being Through a First Year Law" (2012) 12(1) *QUT Law and Justice Journal* 133.

<sup>11</sup> Further detailed information can be provided by the authors at their contact addresses.

is broader, more realistic and more nuanced, than that of the traditional adversarial advocate. Ideally, this widens a student's conception as to what it means to think, act and be like a lawyer. The aim is to provide law students with an opportunity to conceive of a future lawyering role that resonates (and consonates) with a diverse range of personalities, skill sets and values.

*Lawyering and Dispute Resolution* was first delivered by the authors in semester 2 of 2011 as part of the QUT Law School's elective offerings for first year students. It achieved an enrolment of close to 300 students (this included many latter year students). The subject was designed to provide an introductory foundation for students about the contemporary context of legal professional practice, and the importance of dispute resolution practice, knowledge and skills. It complements a latter year elective offered at QUT Law School – *LWB498: Dispute Resolution Practice* – which provides a more advanced level of learning about the role of lawyers in dispute resolution.

The subject was delivered over 13 weeks, and the learning and teaching objectives of the unit strongly reinforce the importance of dispute resolution knowledge and skills for students learning law and for lawyers in the profession.<sup>12</sup>

WEEK	LECTORIAL	KEY CONCEPTS FOR WEEK
1	Introduction to the Unit The Diversity of Legal Practice A Positive Professional Identity for Lawyers	<ul style="list-style-type: none"><li>• Getting to know your lecturers and fellow students</li><li>• Understanding the unit and assessment requirements</li><li>• Starting to think about what lawyers do and the importance of a positive professional identity</li></ul>
2	What Lawyers Need to Know and What Lawyers Need to be Able to do	<ul style="list-style-type: none"><li>• Understanding the importance of legal knowledge and skills in the context of the role of lawyers:<ul style="list-style-type: none"><li>◦ Upholding the rule of law; and</li><li>◦ Resolving/managing disputes</li></ul></li></ul>
3	Lawyers as Reflective Practitioners	<ul style="list-style-type: none"><li>• Understanding the importance of reflective practice in legal education and the practice of law</li><li>• Learning how to be a reflective practitioner</li></ul>

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<sup>12</sup> See, for example, Kift S, "Lawyering Skills: Finding their Place in Legal Education" (1997) 8 *Legal Education Review* 43; Weisbrot D, "What Lawyers Need to Know, What Lawyers Need to be Able to Do: An Australian Experience" (2001) *Journal of the Association of Legal Writing Directors* 21; MacCrate R et al, *Legal and Professional Development – An Educational Curriculum*, American Bar Association (1992). See also Stuckey R et al, *Best Practices for Legal Education: A Vision and A Road Map* (Clinical Legal Education Association, 2007), [http://law.sc.edu/faculty/stuckey/best\\_practices/best\\_practices.pdf](http://law.sc.edu/faculty/stuckey/best_practices/best_practices.pdf) viewed 22 June 12; Sullivan WL et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass Publishing, 2007) (the Carnegie Report).

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WEEK	LECTORIAL	KEY CONCEPTS FOR WEEK
4	Lawyers as Managers and Resolvers of Disputes	<ul style="list-style-type: none"> <li>Understanding conflict and its various definitions</li> <li>Appreciating the difference between conflict and a dispute</li> <li>Acknowledging the different sources or causes of conflict</li> <li>The difference between conflict resolution and conflict management</li> <li>A lawyer's role in managing and responding to conflict</li> </ul>
5	Lawyers as Advocates (Adversarial and Non-adversarial)	<ul style="list-style-type: none"> <li>The definition and role of an advocate</li> <li>Adversarial advocacy</li> <li>Advocacy and ADR</li> <li>Culture, ethics and advocacy</li> </ul>
6	Skills Practicals Communication Skills	<ul style="list-style-type: none"> <li>Skills practicals with a focus on developing communication skills relevant to effective lawyering</li> </ul>
7	Lawyers as Critical Thinkers	<ul style="list-style-type: none"> <li>Understanding the importance of critical thinking for lawyers and legal practice</li> <li>Learning how to be a critical legal thinker</li> </ul>
8	The Psychology of Legal Practice	<ul style="list-style-type: none"> <li>Intelligence and the theory of multiple intelligences</li> <li>Emotional intelligence</li> <li>Brain biology and decision making</li> <li>Perceptual error and judgmental bias</li> </ul>
9	Resilience for Law Students and the Legal Profession	<ul style="list-style-type: none"> <li>Understanding the importance of resilience in legal education and the practice of law</li> </ul>
10	Introduction to Positive Lawyering – Part 1: ADR	<ul style="list-style-type: none"> <li>An understanding of the different ADR forums</li> <li>The role of a lawyer advising upon ADR</li> <li>The lawyer's role before ADR commences</li> <li>The lawyer's role during an ADR proceeding</li> </ul>
11	Introduction to Positive Lawyering – Part 2: Innovative Legal Practices	<ul style="list-style-type: none"> <li>Exploring new frameworks for positive lawyering: Preventive law and restorative justice</li> </ul>
12	Skills Practicals – Dispute Resolution Role-plays	<ul style="list-style-type: none"> <li>Skills practicals with a focus on developing skills in recognising opportunities for non-adversarial practice in law</li> </ul>
13	Podcast on preparing for the exam	<ul style="list-style-type: none"> <li>Discussing the exam</li> </ul>

## PART II: PROMOTING LAW STUDENT WELL-BEING THROUGH THE TEACHING OF DISPUTE RESOLUTION

Hope is sweet-minded and sweet-eyed. It draws pictures; it weaves fancies; it fills the future with delight.

Henry Ward Beecher, *Proverbs from Plymouth Pulpit*

*Lawyering and Dispute Resolution* aims to promote law student psychological well-being by teaching dispute resolution to first year law students. This approach is grounded in the

research of Howieson on student engagement through the teaching of ADR, as well as in our hypothesis that teaching ADR can play a positive role in the formation of a law student's professional identity. Using the positive psychology framework of hope,<sup>13</sup> we suggest that if the goal for law school graduates is for them to become, happy, healthy and competent professionals (in law or otherwise), then helping them develop an emergent sense of professional identity and focusing on non-adversarial lawyering practices are key steps to reaching that goal. These two foundations for the design of the subject and its place in the law curriculum are discussed below.

The field of positive psychology focuses on "wellbeing, happiness, flow, personal strengths, wisdom, creativity imagination and characteristics of positive groups and institutions".<sup>14</sup> The phrase "positive psychology" was initially introduced by Abraham Maslow,<sup>15</sup> but has been popularised and advanced by American psychologist and professor Martin Seligman. Positive psychology is distinct from other branches of psychology and was born from recognition "that the field of psychology, since its inception, has devoted much more attention to human unhappiness and suffering than to the causes and consequences of positive functioning".<sup>16</sup> According to Seligman:

The message of the Positive Psychology movement is to remind our field that it has been deformed. Psychology is not just the study of disease, weakness, and damage; it is also the study of strength and virtue. Treatment is not just fixing what is wrong; it also is building what is right.<sup>17</sup>

The positive psychology message for law academics is that law student psychological distress should be addressed not only by focusing on what is going wrong, but also by promoting the building of skills and capacity that may prevent psychological distress from developing in the first place. Hope theory falls under the conceptual umbrella of positive

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<sup>13</sup> This framework can be found in Martin AD and Rand KL, "The Future's So Bright, I Gotta Wear Shades: Law School Through the Lens of Hope" (2010) 48 *Duquesne Law Review* 203. See also Snyder, n 9.

<sup>14</sup> Hefferon K, *Positive Psychology: Theory, Research and Applications* (Open University Press, 2011) p 2.

<sup>15</sup> Maslow A, *Motivation and Personality* (Harper & Row, 1954).

<sup>16</sup> Ryff C, "Happiness is Everything, or is it? Explorations on the Meaning of Psychological Well-being" (1989) 57(6) *Journal of Personality and Social Psychology* 1069 at 1069.

<sup>17</sup> Seligman M, "Positive Psychology, Positive Prevention, and Positive Therapy" in Snyder CR and Lopez SJ (eds), *Handbook of Positive Psychology* (Oxford University Press, 2002) p 3.

psychology and offers one avenue for promoting positive functioning for law students through empowerment.<sup>18</sup>

Hope can be described as a “cognitive model of human motivation which explains goal related thinking”.<sup>19</sup> Snyder’s model of hope suggests that hope can be understood in terms of three key elements: goals, pathways thinking and agentic thinking. A goal is a mental endpoint or destination that an individual or group is trying to achieve, and can be short-term or long-term. Pathways thinking involves “the production of plausible routes to a goal as well as a sense of confidence in these routes”.<sup>20</sup> Agency/agentic thinking is “the perceived capacity to initiate and sustain movement along a pathway until the goal is reached”.<sup>21</sup> We could therefore say that a law student has high hope when they are motivated and have strong will power (agentic thinking) to generate a range of strategies (pathways thinking) for achieving a goal (an endpoint).<sup>22</sup>

Hope is important for law students because research suggests that “hope predicts academic performance and psychological well-being among undergraduate students” generally, and first year law students more particularly.<sup>23</sup> It is a positive thing to engender hope in our students, particularly in their first year. Martin and Rand noted, for example, that people who have hope have higher levels of “self-esteem, perceived problem-solving abilities, perceptions of control, and positive affect”.<sup>24</sup> They “tend to experience better mental health”,<sup>25</sup> recover better from illness and injury,<sup>26</sup> and have higher levels of social competence and social awareness.<sup>27</sup>

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<sup>18</sup> Rand KL, “Hope and Optimism: Latent Structures and Influences on Grade Expectancy and Academic Performance” (2009) 77(1) *Journal of Personality* 231 at 236; Martin and Rand, n 13 at 209.

<sup>19</sup> Martin and Rand, n 13 at 207.

<sup>20</sup> Rand, n 18 at 233.

<sup>21</sup> Rand, n 18 at 233.

<sup>22</sup> Snyder, n 9, pp 10-11.

<sup>23</sup> Martin and Rand, n 13 at 204-205 referring to the work of Snyder CR et al, “Hope Therapy: Helping Clients Build a House of Hope” in Snyder, n 9, p 125.

<sup>24</sup> Martin and Rand, n 13 at 214 referring to Snyder CR et al, “Hope and Academic Success in College” (2002) 94 *Journal of Education Psychology* 820 at 820.

<sup>25</sup> Martin and Rand, n 13 referring to Cramer KM and Dyrkacz L, “Differential Prediction of Maladjustment Scores with the Snyder Hope Subscales” (1998) 83 *Psychology Reports* 1035.



Law students' exposure to ADR instruction in their first year can strongly contribute to the formation of a positive professional identity. By focusing on theories of non-adversarial justice (therapeutic jurisprudence, restorative justice and preventative law) and introducing students to the spectrum of ADR processes (from negotiation through to arbitration), students are exposed to an alternative conception of lawyering where "non-curial options are privileged over litigation and holistic problem-solving is encouraged".<sup>28</sup> Some law students are able to develop a positive (legal) professional identity based solely upon their exposure to the adversarial paradigm. Other students cannot, and fail to see how their own personality, demeanour and values "fit" with their own conception of the legal practitioner's role. We should not underestimate the potential anxiety that can be produced when law students extrapolate forward and mentally place themselves in a professional role for which they feel no affinity or sense of purpose.

ADR instruction can promote law student well-being in this context by painting a broader (and arguably more humane) picture as to what it means to be, and practise, as a lawyer. The rational, detached, argumentative conceptions of the adversarial lawyer can be situated alongside modes of legal practice where human narratives, relationships and emotions assume equal importance. Law students studying ADR can "cast off the shackles of adversarial behaviour"<sup>29</sup> and learn to appreciate that a strict focus on legal rights is often a "clunky" way of helping a client with a conflict. The use of experiential learning techniques such as negotiation and mediation role plays inevitably reveals to students the emotion, psychology, perceptual error and judgmental bias that is inherent in human conflict.<sup>30</sup> These role-plays, along with explicit instruction on the nexus between psychology and the law,<sup>31</sup> and the role of emotion in conflict, counterpoint the detached

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<sup>26</sup> Martin and Rand, n 13 referring to Barnum DD et al, "Hope and Social Support in the Psychological Adjustment of Children Who Have Survived Burn Injuries and their Matched Controls" (1998) 27 *Children's Health Care* 15; Elliot TR et al, "Negotiating Reality After Physical Loss: Hope, Depression, and Disability" (1991) 61 *Journal of Personality and Social Psychology* 608.

<sup>27</sup> Martin and Rand, n 13 at 215 referring to Snyder CR et al, "Hope Theory, Measurements, and Applications to School Psychology" (2003) 18 *School Psychology Quarterly* 122 at 126.

<sup>28</sup> Douglas K, "The Teaching of ADR in Australian Law Schools: Promoting Non-adversarial Practice in Law" (2011) 22 *ADRJ* 1 at 1.

<sup>29</sup> King M, Frieberg A, Batagol B and Hyams R, *Non-adversarial Justice* (Federation Press, 2009) p 230.

<sup>30</sup> For a discussion of the use of role-plays in ADR education see Douglas K and Coburn C, "Students Designing Role-plays: Building Empathy in Law Students" (2010) *Journal of the Australasian Law Teachers Association* 55; Ruyters M, Douglas K and Law SF, "Blended Learning Using Role-plays, Wikis And Blogs" (2011) 4(4) *Journal of Learning Design* 45. See also Druckman D and Ebner N, "Onstage or Behind the Scenes? Relative Learning Benefits of Simulation Role-play or Design" (2008) 39 *Simulation and Gaming* 465.

<sup>31</sup> The week on psychology in LWB150 focuses on cognitive, behavioural and neurobiological psychology.

nature of thinking like a lawyer, which de-emphasises the human elements of a legal narrative and removes personal and moral thought processes. Exposure to ADR provides an opportunity for law students to conceive the lawyering role in richer and fuller tones. It provides a pathway for law students to develop a professional identity that is more caring and helpful.<sup>32</sup>

The case for introducing ADR to first year law students is strengthened when one considers that the personal and professional identities of law students are most malleable upon entering university.<sup>33</sup> Legal academics teaching into ADR will often hear law students (and sometimes fellow academics) refer to ADR as a soft subject, a warm, fuzzy, hand-holding exercise that sits apart from the real practice of law. Whilst this point of view is certainly diminishing, perhaps its genesis lies in a first year curriculum that privileges adversarialism and litigation as appropriate dispute resolution techniques.<sup>34</sup> The conflict orientation of first year law students is skewed towards adversarial, zero-sum outcomes. This is a result of the legal content and teaching pedagogies employed in the first year of law school. Without any meaningful introduction to ADR in the first year, law students are presented with an unbalanced view as to the lawyer's role in conflict resolution. In this environment, it is easy to see how law students may begin to form a maladaptive legal professional identity that is not consonant with their own value systems or personality.

Drawing on the foundation work of Hall et al, it is our argument that law students who struggle to develop a *positive* professional identity are likely to experience declines in their psychological well-being. If a law student is seeking a career in law, but does not feel positive about what lawyers do, this student is working towards a goal that has no meaning for him or her. With respect to self-determination theory, sources of motivation then become problematic for such a student. Intrinsic motivation can be defined as "engagement in an activity for the purpose of gaining inherent satisfaction from the activity itself, or to further a goal which is central to one's belief system".<sup>35</sup> This has implications with respect to a student's agentic thinking. Unless they derive satisfaction from the study of law itself, such students would become reliant on extrinsic motivators to get through

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<sup>32</sup> King et al, n 29, p 230.

<sup>33</sup> Hall et al (2010), n 2 at 36, referring to Cassidy C and Trew K, "Assessing Identity Change: A Longitudinal Study of the Transition from School to College" (2001) 4 *Group Processes and Intergroup Rel* 49 at 56-57.

<sup>34</sup> Douglas, n 28 at 2.

<sup>35</sup> Krieger L, "Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It" (2002) *Journal of the Association of Legal Writing Directors* 258 at 259.

their law degree. This is where psychological distress becomes an issue; if law student behaviour is “neither intrinsically enjoyable nor fundamentally meaningful – the extrinsically motivated behaviour will likely produce a sense of frustration, irritation, or stress”.<sup>36</sup> As an antidote, the study of ADR provides a plausible route to developing a positive professional identity. It potentially increases the intrinsic motivation of law students because it broadens the conception of what lawyers do, and the positive role they might play in the resolution of disputes.

Positive professional identity aside, the teaching of ADR has been shown to have more direct impact upon law student well-being. Howieson asserted that “participation in an [ADR] course can increase a student’s sense of belonging to the school in which it is taught, and can increase the levels of the students’ mental health”.<sup>37</sup> In 2007, Howieson and Ford’s study of student engagement at the University of Western Australia Law School identified that “students who had undertaken the optional ADR unit exhibited a greater sense of belonging to the Law School and consequently a greater sense of engagement, than students who had not completed the ADR unit”.<sup>38</sup> Student engagement is increasingly acknowledged as critical to student learning.<sup>39</sup> Howieson’s study was able to empirically establish a significant correlation between a law student’s sense of belonging to the law school and their level of mental well-being.<sup>40</sup> This finding is consistent with self-determination theory which posits that “human beings require regular experiences of autonomy, competence and *relatedness* to thrive and maximise their positive motivation”.<sup>41</sup> According to Sheldon and Krieger, autonomy, competence and relatedness are precisely the kinds of experiences that law students implicitly take into account when evaluating their own well-being.

Finally, the study of ADR can have positive effects upon student well-being because it reinforces the importance of emotions and interpersonal connectivity. According to Silver, “legal education should prepare students for the emotional dimensions of lawyering. We

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<sup>36</sup> Krieger, n 35 at 259-260.

<sup>37</sup> Howieson, n 8 at 58.

<sup>38</sup> Howieson, n 8 at 59-61, referring to Howieson and Ford, n 8.

<sup>39</sup> See, for example, the yearly Reports of the Australian Council for Educational Research (ACER) on the *Australasian Survey of Student Engagement*, <http://www.acer.edu.au/documents/> viewed 22 June 2012.

<sup>40</sup> Howieson, n 8 at 60.

<sup>41</sup> Sheldon K and Krieger L, “Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory” (2007) 33(6) *Personality and Social Psychology Bulletin* 883 at 885 (emphasis added).

fail students if we fail to prepare them for the impact of their emotional lives, as well as those of their clients, on the practice of law".<sup>42</sup> ADR and non-adversarial subjects have been identified as key sites for law students to understand the relevance of emotion and interpersonal connection to their future careers.<sup>43</sup> By articulating and valuing the intuitive, the emotive and the personal reactions to law, ADR classrooms are engaging the emotional, interpersonal and intrapersonal intelligences of law students. When these intelligences are cultivated in ADR subjects, they have positive flow on effects for a student's current and future psychological well-being. Salovey and Mayer have drawn specific links between emotional intelligence and increases in mental health. They suggested that:

[T]he person with emotional intelligence can be thought of as having attained at least a limited form of positive mental health ... [E]motionally intelligent individuals accurately perceive their emotions and use integrated, sophisticated approaches to regulate them as they proceed toward important goals.<sup>44</sup>

Benjamin et al argued that the unbalanced development of interpersonal skills may lead to impaired psychological well-being.<sup>45</sup> ADR classrooms focus on communication skills, negotiation, perspective taking, empathy and personality profiling. When the theory behind these "soft skills" is canvassed and students are provided the opportunity to practise these skills (through ADR pedagogies such as role-plays), increased interpersonal proficiencies can increase a student's intrapersonal existence. Aside from the development of these soft skills, the strongest pedagogical predictor of law student well-being in Howieson's study was the increased interaction with fellow students that ADR classes facilitated. This suggests that what is taught in ADR subjects, as well as how it is taught, both contribute positively to law student psychological well-being.

Certainly, the 2011 cohort of *Lawyering and Dispute Resolution* students' responses to the subject's focus on ADR knowledge and skills were positive. They said, for example:

- "This unit has been a refreshing change in respect to other law subjects that are completed. This unit has posed some serious and important questions which have

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<sup>42</sup> Silver MA, "Emotional Intelligence and Legal Education" (1999) 5(4) *Psychology, Public Policy, and Law* 1173 at 1174.

<sup>43</sup> Douglas K and Batagol B, "ADR and Non-adversarial Justice as Sites for Understanding Emotion in Dispute Resolution: Reporting on Research into Teaching Practices in Selected Australian Law Schools" (2010) 20 *Journal of Judicial Administration* 106.

<sup>44</sup> Salovey P and Mayer JD, "Emotional Intelligence" (1989/1990) 9(3) *Imagination, Cognition and Personality* 185 at 201.

<sup>45</sup> Benjamin et al, n 5 at 250-251.

helped view my law studies in a new light. A light that is more fully informed and connected with the real world.”

- “The lecturers throughout the course of the semester clearly demonstrated the relevance that the skills we were learning were relevant for future practice in law. This provided me with more motivation to succeed.”
- “The best aspect of this unit was the material. I believe that the information I learned from the material will help me in my future studies and practice.”
- “This unit should be compulsory for all first year students. The discussion of resilience and being mindful of your eventual career, and the possibilities of ADR are enormously helpful.”
- “Very interesting – new insight into the practice of law. It should be compulsory to all students in first year.”
- “I am a fourth year student, and was glad to get back to basics. The information about depression in the workplace and reflective practice was refreshing, and the fact that some readings really held the basic stuff (what lawyers actually do) was really good. It was also good to learn about dispute resolution – rather than merely litigation. I definitely think that this subject should be made core! The readings were excellent – they weren’t difficult to get through but held very good information, just about the legal field in general.”
- “Really a great subject, guys. It has really helped me re my own mental health as a law student. Also, the ADR stuff has been great. I have been genuinely excited to sit down and do the readings/attend the lectures each week.”
- “Getting to know the different types of ADR more thoroughly (they seem to pop up in other subjects and you don’t particularly get a very good/clear of the distinctions between them. Topics – interesting and relevant to study and life in general, particularly in relation to self-reflection.”
- “I wished to say thank you for an extremely informative, challenging, yet unforgettable semester. I believe your efforts to integrate ADR into an education already so laden with adversarial advocacy is nothing short of brave and admirable, and I wish you both all the success as you endeavour to bring these courses closer to legal education. I have certainly learnt valuable lessons and will undoubtedly carry these with me for the rest of my law degree.”<sup>46</sup>

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<sup>46</sup> For further comments by students see Field and Duffy, n 10.

## **CONCLUSION**

This article has suggested that addressing the issue of law students' psychological distress through a first year law subject is a meaningful contribution to the resolution of a complex problem. By utilising the positive psychology framework of hope, it has been argued that ADR subjects within the law degree can foster a developing positive professional identity in law students. Instruction in ADR has also been shown to contribute directly to the psychological well-being of law students. By offering LWB150 as a first year elective unit, we are potentially addressing the decline of law student psychological well-being when it is reported to be happening. There is benefit in maximising student engagement with the law degree as soon as possible, so that it might flow into other subject areas in future years, and additionally combat first year attrition rates. Hope is an important gift that legal academics can instil within their students. For all that current legal education promotes the dispassionate, the risk averse and the pessimistic, instruction in ADR can promote the balance. The counterpoint. Hope.